

REMARKS/ARGUMENTS

Responsive to the Office Action mailed December 16, 2004:

I. PRIOR ART MATTERS

- A. The Office Action rejected claims 1-9 under 35 USC 103(a) as being unpatentable over Tsevdos in view of Alexander. Applicant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.¹ If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.²

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.³

Applicant respectfully traverses the § 103 rejection because the office action has not established a *prima facie* case of obviousness.

Tsevdos is not 103(a) prior art for any of its teachings used in the present rejection since its filing date (December 10, 1996) is later than the priority date (December 4, 1996) of the present application.

¹MPEP Sec. 2142.

²Id.

³Id. (emphasis supplied)

- B. The Office Action rejected claims 10-14 under 35 USC 103(a) as being unpatentable over Tsevdos in view of Alexander and further in view of Kaplan. Applicant respectfully traverses the rejection.

Tsevdos is not 103(a) prior art for any of its teachings used in the present rejection since its filing date (December 10, 1996) is later than the priority date (December 4, 1996) of the present application.

- C. The Office Action rejected claim 15 under 35 USC 103(a) as being unpatentable over Alexander in view of Tsevdos and further in view of Salisbury. Applicant respectfully traverses the rejection.

Tsevdos is not 103(a) prior art for any of its teachings used in the present rejection since its filing date (December 10, 1996) is later than the priority date (December 4, 1996) of the present application.

- D. The Office Action rejected claim 16 under 35 USC 103(a) as being unpatentable over Alexander in view of Tsevdos and further in view of Salisbury and further in view of Hwang. Applicant respectfully traverses the rejection.

Tsevdos is not 103(a) prior art for any of its teachings used in the present rejection since its filing date (December 10, 1996) is later than the priority date (December 4, 1996) of the present application.

- E. The Office Action rejected claim 17 under 35 USC 103(a) as being unpatentable over Tsevdos in view of Alexander and further in view of Salisbury and further in view of Cook. Applicant respectfully traverses the rejection.

Tsevdos is not 103(a) prior art for any of its teachings used in the present rejection since its filing date (December 10, 1996) is later than the priority date (December 4, 1996) of the present application.

Furthermore, Cook does not disclose a plurality of scannable purchase cards each having a unique bar code keyed to the music selections chosen by the customer. There is no disclosure in Cook that the "gift card" is scannable or has a unique bar code keyed to the music selections chosen by the customer.

- F. The Office Action rejected claims 18-21 under 35 USC 103(a) as being unpatentable over Tsevdos in view of Alexander and further in view of Kaplan and further in view of Cook. Applicant respectfully traverses the rejection.


Tsevdos is not 103(a) prior art for any of its teachings used in the present rejection since its filing date (December 10, 1996) is later than the priority date (December 4, 1996) of the present application.

Furthermore, Cook does not disclose the customer obtaining a purchase card with a unique barcode number and scanning the purchase card to obtain the unique barcode and scanning the purchase card at a checkout station to obtain the unique barcode. There is no disclosure in Cook that the "gift card" is scannable or has a unique bar code keyed to the music selections chosen by the customer.

For the above reasons, Applicant respectfully requests the allowance of all claims and the issuance of a Notice of Allowance.

Dated: 16 Mar 05

Respectfully submitted,

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